



# Department of Justice

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**JUSTICE DEPARTMENT ALLOWS ELECTRIC POWER JOINT VENTURE  
TO CHANGE METHOD OF BIDDING IN NEWLY-DEREGULATED MARKET  
ENVIRONMENT**

WASHINGTON, D.C. -- The Department of Justice today approved a proposal by two electric power generating joint ventures to offer their output on the basis of price rather than regulatory cost.

The two joint ventures, owned by ten electric power utilities located throughout Pennsylvania, New Jersey, Delaware and Maryland, were created in the 1960's to finance, construct and operate four coal-fired electric power generating units at the Keystone and Conemaugh plants in western Pennsylvania.

The owners of the joint ventures are all members of the Pennsylvania-New Jersey-Maryland Interconnection Association ("PJM"), which operates as a regional economic dispatch center. Its dispatchers select, on an hourly basis, the cheapest source of energy available from any Pool member or other Pool participant to serve the next increment of demand for electricity. PJM members retain the right to designate the output of generating units they own for the benefit of their own customers. Pool interchange functions as a residual market, under which energy needs--that Pool participants have not arranged to satisfy from their own generating resources or from contract energy purchases--are met through the most economic uncommitted generating resources of any PJM participant.

The Department's decision was stated in a business review letter issued by Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division.

Klein indicated, "it does not appear that the joint ventures' proposal to bid their electric power output on a price, rather than regulated cost, basis will have any anticompetitive effect."

"Since the joint ventures' capacity would not be sufficient to serve even ten percent of the market," Klein concluded that they would not be able to control market prices by themselves.

On April 1, 1997, the Federal Energy Regulatory Commission (FERC) approved a revision of the original PJM Agreement which modifies the pricing of Pool interchange. Pool interchange is now priced on the basis of hourly "market clearing" prices. The market clearing price is the reported variable cost of the most expensive resource that the Independent System Operator (ISO) calls on in an hour to satisfy demand for Pool interchange in that hour. Any PJM Pool participant whose generating units supply Pool interchange in a given hour receives the market clearing price for that hour, and any PJM Pool participant whose customers consumed Pool interchange in the hour pays that same market clearing price, regardless of their actual bid amount.

On July 14, 1997, PJM members proposed a further modification of pricing for Pool interchange that would permit each PJM Pool participant to bid to supply energy to PJM at any price that Pool participant deems appropriate, rather than at cost. Under the new proposal, PJM's current dispatch method would then apply to such discretionary bids.

In order for the new proposal to take effect, FERC would have to determine that the Pool members either lack market power over the sale of electric energy in Pool interchange or have adequately reduced any market power they may possess. The proposed changes in PJM would allow the joint ventures to bid their output based on the price they are willing to accept rather than their regulatory costs.

To avoid the risk that the joint ventures might be used as an mechanisms for collusion between or among their owner/rivals, they and their owners will observe information flow limitations designed to avoid anticompetitive information exchanges.

The joint ventures' bids to PJM or the ISO will be prepared by an internal Project Office. No owner will communicate any information to the joint ventures about any bid that the owner intends to submit to PMJ

or the ISO. Information regarding bids which the joint ventures have submitted to PJM or the ISO will not be available for review by any owner until after the deadline for submission of competing bids. In addition, all owners of the joint ventures have pledged to adhere to a Code of Conduct that expressly enjoins them from discussing with each other their independent prices, marketing plans, costs and other competitively significant information.

Under the Department's business review procedure, a person or organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the activity as a violation of federal antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Suite 215, Liberty Place, 325 7th Street, N.W., Washington, D.C. 20530. After a 30-day waiting period, the document supporting the business review will be added to the file.

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